IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1387 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAMBHUBHAI J PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SM MAZGAONKAR for Petitioner No. 1

Mr. B.Y.Mankad, ASSTT. GOVERNMENT PLEADER for Respondents No. 1-2,4-5

MR HS MUNSHAW for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 04/12/2001

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for a writ of mandamus directing the

respondent authorities to grant pensionary benefits to the petitioner incluing monthly pension, gratuity and commutation of pension as if he is superannuated on 31st December, 1988 and to determine his pension, gratuity and commutation of pension on the basis of his services rendered upto 31st December, 1985 and for a direction to pay interest on the delayed payment of gratuity from 1.4.1989 till the date of payment at the rate prescribed under Government resolution dated 31.5.1986 and interest at the rate of 12% on the delayed payment of commutastion of pension from 1.4.1989 till the date of payment.

2. The petitioner was serving as an agricultural supervisor on deputation to Mahesana District Panchayat as Extension officer in Training and Visit scheme, Nanasan, Ta: Kai, Dist: Mahesana. The date of birth of the petitioner was recorded in the service record as 30th December, 1928. Hence, he was to retire from service on 31st December,1986 though his actual date of birth as recorded in the birth register of the concerned authority was 14th December 1930. As per the birth register, the date of retirement was 31st December, 1988. The petitioner moved the representastion before the authority concerned for the correction of the date of birth in the service record, but the claim of the petitioner was refused. Then the petitioner had to file Regular Civil Suit No. 486 of 1986 in the Court of Civil Judge (S.D.), Mahesana on 12.12.1986. The petitioner also moved an application exh. 5 for interim injunction. The interim relief was also granted by the Court restraining the respondents from retiring the petitioner from service with effect from 31st December, 1986. The respondents preferred Civil Miscellaneous Appeal No. 18 of 1987 against the decision of the trial court and the appeal was dismissed by the Extra Assistant Judge, Mahesana vide order date 18th April, 1987. The respondents preferred Civil Revision Application No. 619 of 1987 before this Court against the orders of the trial court as well as the District Court. This Court did not pass the interim order staying the orders of lower appellate court or trial court. As such, the petitioner continued in service even after his recored date of retirement i.e. 31st December, 1986 upto 31st December, 1988. The petitioner claimed the benefits on the basis of the actually attaining the age of superannuation on the basis of his correct date of bith i.e. 14.12.1930. The Civil Revision Application filed by the respondent was rejected as infructuous with the observations that the actual date of retirement has to be decided by the trial court in the suit as to whether it was 31st December, 1986 or 31st December, 1988. After the

retirement of the petitioner from 31st December, 1988, he was not given the retiral benefits inspite of several reminders made to the authorities concerned. However, the petitioner was granted provisional pension and leave encashment benefits on the basis of his date of retirement of 31st December, 1986. The petitioner was not paid the amount of gratuity and commutation of 1/3rd pension for which he had filed a petition being Special Civil Application no.7140 of 1990 for a direction to the respondents to immediately finalise and pay to the petitioner the amount of gratuity as per the rules and the amount of commutation of 1/3rd pension on the basis of the date of retirement of 31st December, 1986 together with interest at the rate of 12% till the date of payment. The aforesaid Special Civil Applicationno. 7140 of 1990 was finally disposed of at the admission stage by this Court vide its order dated 19.11.1990 allowing the petition and directing the respondents to pay to the petitioner the amount of gratuity payable to him and the amount of commutation of 1/3rd pension on the basis that he was retired on 31st December 1986 within three months from the date of the order and that was made subject to the decision in the suit. The respondent no. 4 Director of Pension and Provident Fund issued pension payment orders to the Treasury Officer on 14.2.1991 wherein the Director of Pension has sanctioned the basic pension of Rs. 822/with effect from 1.1.1987 and commutastion of Rs.294/therefrom which came to Rs. 34,609.88 ps. and gratuity of Rs.29,700/-, but directed that the pay and allowances paid to the petitioner for the period from 1.1.1987 to 31st December, 1988 should be recovered from the amount payable to the petitioner. The order passed by the respondent no. 4 was illegal and not sustainable in the eye of law. As the petitioner had already performed his duty on the basis of the court's order, even the date of birth was not finalised by the trial court in the suit. As such, the order passed by the respondent no. 4 was in violation of fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. The petitioner had actually worked for the period from 1.1.1987 to 31.12.1988 and hence he is entitled to the salary payable to him, even on the quantum merit principle, the amount cannot be deducted, the amount cannot be deducted from the amount of gratuity and commutation of the pension payable to the petitioner and the action of the respondent no. 4 is malafide with the object of merely harassing the petitioner. The petitioner is entitled to claim the interest for the delayed payment proposed to be made by the department in respect of the gratuity and commutation of pension as well as exemplary costs of the petition.

As per the Government resolution, Finance Department dated 13rd May, 1986 the rate of interest has been provided on delayed payment of death cum retirement gratuity. If the payment is delayed by three months upto one year, the Government servant is entitled to interest at the rate of 7% per annum on the amount of death cum retirement gratuity for the period beyond one year, the petitioner is entitled to receive interest at the rate of 12% on the gratuity payable to him as per the aforesaid Government Resolution.

3. No affidavit-in-reply has been filed on behalf of the responents. I have heard the learned counsel for the parties and perused the relevant papers on record. Mr. Munsha, the learned advocate for the respondent no. 3 submitted that the petitioner was working on deputation with the Deputy Driector of Agriculture, Extension, Mahesana district and service record papers regarding the service record have already been sent to the concerned department for calculation of the reitemental benefits of the petitioner. On the other hand, the learned Assistant Government Pleader for the respondent nos. 1,2,4 and 5 could not substantiate the contentions raised by the learned counsel for the petitioner. Thus, it appears from the record that after the order passed by this Court on 19th November, 1990 in Special Civil Application no. 7140 of 1990, the amount of gratuity an commutation was sanctioned, but that was not paid due to the fact that the petitioner had filed a suit in the court of law and the matter was pending regarding the date of birth before the court of law. Hence, the respondent no. 4 having sanctioned the amount of gratuity as well as commutation of pension directed for the deduction of the salary and allowances from the amount payable to the petitioner for the period from 1.1.1987 and this order has been challenged by the petitioner in this petition. The learned counsel for the petitioner placed on record the certified copy of the judgment dated 15th December, 1992 whereby the appeal preferred by the respondent has been dismissed. From the judgment of Regular Civil Appeal No. 165 of 1991 dated 15th December, 1992 it appears that the petitioner filed a suit for a declaration that the order dated 21st October, 1986 passed by the Agriculture and Rural Development Department, Government of Gujarat, Gandhinagar is illegal, ultravires and against the principles of natural justice and the correct date of birth of the petitioner is 14.12.1930 and the date of birth recorded as 30.12.1928 in the service record is wrong. The petitioner-plaintiff also prayed that the defendant be permanently restrained from retiring him on

31st December, 1986 and to implement the order passed by the respondent no. 1 and restraining the implementation of the order dated 21st October, 1985 by the respondents. The trial Court decreed Regular Civil Suit no.486 of 1986 on 3rd October, 1991. Being aggrieved by the said judgment and decree the respondents filed Regular Civil Appeal No. 165 of 1991 before the District Court. The Second Joint District Judge, Mahesana dismissed the appeal vide his judgment and order dated 15.12.1992 confirming the findings of the trial court, holding that the birth date of the petitioner-plaintiff is 14th December, 1930 which was supported by the documentary evidence and the District Court did not find any ground for interference with the decision of the trial court. When the petitioner had served the defendants two years more as per birth date of the year 1930, he must be given all benefits of service as the trial court as well as the lower appellate court has already held that the date of birth of the petitioner is 14th December, 1930 and not 30.12.1928. The petitioner, pursuant to the court's order continued in service till the date 31st December, 1988. As the finding has already been recorded by the court of law, there is nothing on record to show that the findings recorded by the court of law were erroneous, illegal or obtained on the basis of forged documents. Thus, the findings have to be accepted and the department requires to accept the findings of court of law regarding the date of birth of the petitioner as 14th December, 1930. As such, the petitioner is entitled to be continued in service till 31st December, 1988. Even on the basis of the findings recorded by the court of law, superannuation age of the petitioner would come on 31st December, 1988. Hence the petitioner would be entitled for all retiral benefits including pensionary benefits, gratuity, provident fund and commutation of pension etc. till the date of retirement i.e. 31st December, 1988. Thus, the orders passed by the respondent no. 4 are illegal and not sustainable in the eye of law and they are liable to be quashed and set aside. The respondent no. 4 has committed an illegality on the basis of the record in directing to deduct the salary with allowances from the payment to be made to the petitioner for the period from 1.1.1987 to 31.12.1988. As such, the order date 14.2.1991 passed by the respondent no. 4 Director of Pension of Provident Fund, Ahmedabad requires to be quashed and set aside.

4. In the result, this petition is allowed.
The orer dated 14.12.1991 passed by the respondent no. 4 Director of Pension of Provident Fund, Ahmedabad is hereby quashed and aside. The respondents are directed

to grant all retiral benefits including all pensionary benefits like monthly pension, gratuity, commutation of pension as if the petitioner has superannuatedd on 31st December, 1988. The respondents are also directe to calculate his pension, gratuity and commutation of pension on the basis of the total service rendered upto 31st December, 1988 excluding the amount whichever has been paid towards retiral benefits as per Government circular dated 13th May, 1986 with interest at the rate of 9% per annum, within three months from the date of presentation of a certified copy of this judgment. Rule is made absolute accordingly with no order as to costs.

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